

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

ALBERT EDMOND

PLAINTIFF

CIVIL ACTION NO. 5:04cv107-JCS

DOLAN WALLER, ET AL.

DEFENDANTS

MEMORANDUM OPINION AND ORDER

This matter is before the Court on the Motions to Dismiss filed by Glenn Spann and Christopher Epps¹. (Docket entry numbers 15, 17, and 22). The Plaintiff has failed to respond to the Motions. Spann and Epps are M.D.O.C. officials involved in the review of the Plaintiff's Administrative Remedy claims forming the basis of this suit. The Court has considered the Motions and finds that they should be granted. The Court finds that the Plaintiff's claims against Spann and Epps should be dismissed for a failure to state a claim. Plaintiff's claims against Spann and Epps sound in *respondeat superior*. Plaintiff has failed to allege Spann's and Epps's direct involvement in the alleged deprivations on which this action is based. Jolly v. Klein, 923 F.Supp. 931, 943 (S.D. Tex. 1996)("the plaintiff must allege facts reflecting the defendants' participation in the alleged wrong, specifying the personal involvement of each defendant."). Supervisory officials, moreover, "cannot be held liable for the actions of subordinates under any theory of vicarious liability." Id. Furthermore, Plaintiff's claims for emotional injury against these defendants should be dismissed as he has shown no prior physical injury related to his

¹This action is founded upon 42 U.S.C. § 1983. The parties have consented to have a United States Magistrate Judge conduct any all further proceedings in the case and order the entry of final judgment, and the District Judge subsequently entered an order of reference. 28 U.S.C. § 636 (c); Fed. R.Civ. P. 73.

claims against these defendants. “No federal civil action may be brought by a prisoner. . . for mental or emotional injury suffered while in custody without a prior showing of physical injury. 42 U.S.C. § 1997e(e). Accordingly, the Plaintiff’s claims against Spann and Epps should be dismissed without prejudice.

Because this Order does not dismiss all of the plaintiff’s claims, this Order does not constitute a final, appealable judgment.

SO ORDERED, this the 27 day of March, 2006.

s/ James C. Sumner
UNITED STATES MAGISTRATE JUDGE